

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JAMES WALTER ERVIN,

Plaintiff,

v.

Case. No. 11-13776

Hon. Lawrence P. Zatkoff

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

OPINION AND ORDER

AT A SESSION of said Court, held in the United States Courthouse,
in the City of Port Huron, State of Michigan, on September 25, 2012

PRESENT: THE HONORABLE LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

I. INTRODUCTION

Plaintiff filed this action seeking disability insurance benefits and supplemental security income under the Social Security Act. This matter currently comes before the Court on the Magistrate Judge's Report and Recommendation [dkt 17], in which the Magistrate Judge recommends that Plaintiff's Motion for Summary Judgment [dkt 11] be denied and Defendant's Motion for Summary Judgment [dkt 16] be granted. Plaintiff has filed objections to the Magistrate's Report and Recommendation [dkt 18]. Defendant has not yet responded to Plaintiff's objections and the Court determines that such response is unnecessary at this time. The Court has thoroughly reviewed the court file, the respective motions, the Report and Recommendation, and Plaintiff's objections. For the reasons discussed below, the Court ADOPTS the Magistrate Judge's Report and Recommendation. Plaintiff's Motion for Summary Judgment is DENIED, and Defendant's Motion

for Summary Judgment is GRANTED. The Court will, however, briefly address Plaintiff's objections.

II. LEGAL STANDARD

The Court examines an ALJ's decision to determine if the correct legal standard was used and if the findings are supported by substantial evidence. *Key v. Callahan*, 109 F.3d 270, 273 (6th Cir. 1997). The ALJ's decision "is not subject to reversal, even if there is substantial evidence in the record that would have supported an opposite conclusion, so long as substantial evidence supports the conclusion reached by the ALJ." *Id.* Substantial evidence is "more than a scintilla of evidence but less than a preponderance and is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Brainard v. Sec'y of Health & Human Servs.*, 889 F.2d 679, 681 (6th Cir. 1989). In determining whether the Commissioner's decision is supported by substantial evidence, the Court must examine the administrative record as a whole. *Cutlip v. Sec'y of Health & Human Servs.*, 25 F.3d 284, 286 (6th Cir. 1994) (per curiam). The Court may not try the case de novo, resolve conflicts in evidence, or decide questions of credibility. *Bass v. McMahon*, 499 F.3d 506, 509 (6th Cir. 2007). If the Commissioner's decision was supported by substantial evidence and decided under the correct legal standard, the Court must affirm the Commissioner's decision even if it may decide the case differently, and even if substantial evidence also supports the claimant's position. *Mullen v. Bowen*, 800 F.2d 535, 545 (6th Cir. 1986) (en banc).

III. ANALYSIS

Plaintiff raises five objections to the Magistrate Judge's Report and Recommendation. In his objections, Plaintiff essentially disputes the ALJ's weighing of the evidence, and objects to the Magistrate Judge's failure to adopt Plaintiff's views in that regard. In fact, Plaintiff's objections to the Report and Recommendation repeat the same arguments raised in his Motion for Summary

Judgment. Plaintiff's objections—and arguments asserted in his motion—are devoid of any facts or law demonstrating that the ALJ failed to apply the correct legal standard or made findings of fact unsupported by substantial evidence in the record. *See Key*, 109 F.3d at 273. The ALJ showed, and the Magistrate Judge acknowledged, that substantial evidence existed to support the ALJ's conclusions.

Accordingly, IT IS HEREBY ORDERED that Plaintiff's Motion for Summary Judgment [dkt 11] is DENIED, and Defendant's Motion for Summary Judgment [dkt 16] is GRANTED.

IT IS SO ORDERED.

Date: September 25, 2012

S/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE